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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

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11 JOHN ROBERT DEMOS, JR,

12 Plaintiff,

13 v.

14 UNITED STATES DISTRICT COURT OF
SEATTLE, WASHINGTON,

15 Defendant.

CASE NO. 2:22-cv-00671-DGE

ORDER ADOPTING REPORT AND
RECOMMENDATION

16 This matter comes before the Court on the Report and Recommendation of the
17 Honorable J. Richard Creatura. (Dkt. No. 2.) No objections were filed. Plaintiff has since filed
18 a notice of appeal in this matter that has not yet been resolved by the Ninth Circuit. (Dkt. No. 3.)


19 With respect to Plaintiff's appeal, the Court notes that a federal district court and a
20 federal court of appeals "should not attempt to assert jurisdiction over a case simultaneously."
21 *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam). Generally,
22 "[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction
23 on the court of appeals and divests the district court of its control over those aspects of the case
24

involved in the appeal.” *Id.* However, when a notice of appeal is defective in that it refers to a non-appealable interlocutory order, it does not transfer jurisdiction to the appellate court, and so the ordinary rule that the district court cannot act until the mandate has issued on the appeal does not apply.” *Nascimento v. Dummer*, 508 F.3d 905, 908 (9th Cir. 2007). In such a case, the district court “may disregard the purported notice of appeal and proceed with the case, knowing that it has not been deprived of jurisdiction.” *Ruby v. Sec’y of the U.S. Navy*, 365 F.2d 385, 389 (9th Cir. 1966). The Ninth Circuit has held that a magistrate judge’s recommendation of dismissal is not a final, appealable order absent consent by the parties. *See Serine v. Peterson*, 989 F.2d 371, 372-73 (9th Cir. 1993) (magistrate judge’s findings and recommendations not appealable; premature appeal not cured by subsequent entry of final judgment by district court). Accordingly, the Court finds that it retains jurisdiction over this matter.

The Court, having reviewed the Report and Recommendation of the Honorable J. Richard Creatura, United States Magistrate Judge and the remaining record, hereby finds and ORDERS as follows:

1. The Court ADOPTS the Report and Recommendation.
2. Plaintiff’s action is DISMISSED without prejudice and his application to proceed *in forma pauperis* is denied as moot.
3. The Clerk is DIRECTED to close this case and send copies of this Order to Plaintiff and to the Hon. J. Richard Creatura.

Dated this 10th day of June 2022.



David G. Estudillo
United States District Judge